

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PHOSPHATE CHEMICALS EXPORT
ASSOCIATION, INC., a Delaware
corporation,

Plaintiff,

vs.

LAGINHA AGRO INDUSTRIAL S/A, a
Brazilian sociedade anonima (*i.e.*,
corporation), and JL COMERCIAL
AGROQUIMICA LTDA., a Brazilian limitada)
(*i.e.*, limited liability company),

Defendants.

Case No. 08 cv 3031

Hon. Joan H. Lefkow

Magistrate Judge Mason

**PLAINTIFF PHOSPHATE CHEMICALS EXPORT ASSOCIATION, INC.’S *EX PARTE*
MOTION TO ISSUE LETTERS ROGATORY**

Plaintiff Phosphate Chemicals Export Association, Inc. (“PhosChem”), by its attorneys Foley & Lardner LLP, respectfully moves this Court for entry of an order issuing Letters Rogatory to the proper authorities in Brazil for purposes of effecting service of process on Laginha Agro Industrial S/A and JL Comercial Agroquimica Ltda. (collectively, “Defendants”) in this lawsuit (“Motion”). In support of its Motion, PhosChem states the following:

1. On May 23, 2008, PhosChem initiated the instant lawsuit by filing a Complaint against the Defendants seeking damages in excess of \$525,401.74 resulting from the Defendants’ breaches of a contract for the sale and shipment of fertilizer and a related guarantee agreement. Summons issued for each Defendant on the same date.

2. The Defendants are both located in Brazil with no known contacts or registered agents properly appointed in the United States for purposes of receiving service of process. As a result, PhosChem must take steps to serve process on the Defendants through the Inter-American Convention on Letters Rogatory and Additional Protocol (“Inter-American Convention”), to which both the United States and Brazil are parties.

3. All courts of the United States have the inherent authority to issue Letters Rogatory. See U.S. v. Reagan, 453 F.2d 165, 171-74 (6th Cir. 1971), cert. denied 406 U.S. 946 (1972). Additionally, a United States tribunal may transmit Letters Rogatory directly to a foreign tribunal or agency. See 28 U.S.C. § 1781. Finally, the scope of Inter-American Convention provides:

This Convention shall apply to letters rogatory, issued in conjunction with proceedings in civil and commercial matters held before the appropriate authority of one of the States Parties [a group that includes the United States] to this Convention, that have as their purpose:

(a) The performance of procedural acts of a merely formal nature, such as service of process, summonses or subpoenas abroad[.]

4. Upon instruction from this Court, counsel for PhosChem will transmit to the Clerk of the Court the original Letters Rogatory for his signature and issuance, copies of which are attached hereto as Group Exhibit A.

WHEREFORE, PhosChem respectfully requests that this Court enter an order (i) granting this Motion in its entirety, (ii) authorizing the issuance of Letters Rogatory for purposes of effecting service of process abroad on the Defendants and (iii) granting such other and further relief as this Court deems just and proper.

Dated: June 25, 2008

Respectfully submitted,

PHOSPHATE CHEMICALS EXPORT
ASSOCIATION, INC.

/s/ Daniel M. Cordis

Martin J. Bishop (IL Bar No. 06269425)
Daniel M. Cordis (IL Bar No. 6285963)
Foley & Lardner LLP
321 North Clark Street, Suite 2800
Chicago, IL 60610-4764
312.832.4500 (t)
312.832.4700 (f)

Group Exhibit A

**ANNEX TO THE ADDITIONAL PROTOCOL
TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY**

LETTER ROGATORY 1/**FORM A**

1

**REQUESTING JUDICIAL OR OTHER
ADJUDICATORY AUTHORITY****Name** Hon. Joan H. Lefkow**Address** United States District Court
Northern District of Illinois
Everett McKinley Dirksen
United States Courthouse, 20th Floor
219 South Dearborn Street
Chicago, IL 60604 USA

2

CASE**DOCKET NO:** 08CV3031Phosphate Chemicals Export Association, Inc.,
Plaintiff,
versus
Laginha Agro Industrial S/A and
JL Comercial Agroquimica Ltda.,
Defendants.

3

**CENTRAL AUTHORITY OF THE
STATE OF ORIGIN****Name** U.S. Department of Justice**Address** Office of International Judicial Assistance
1100 L Street NW, Room 11001
Washington, DC 20530
USA

4

**CENTRAL AUTHORITY OF THE
STATE OF DESTINATION****Name** Ministry of Justice**Address** Esplanada dos Ministerios
Block T, Ed. Sede
70064-900 Brasilia, D.F.
Brazil
Tel. 55-61-218-3000

5

REQUESTING PARTY**Name** Phosphate Chemicals Export Association, Inc.**Address** c/o counsel

6

COUNSEL OF THE REQUESTING PARTY**Name** Martin J. Bishop
Daniel M. Cordis**Address** FOLEY & LARDNER LLP
321 North Clark Street, Suite 2800
Chicago, IL 60610-4764
USA**PERSON DESIGNATED TO ACT IN CONNECTION WITH THE LETTER ROGATORY****Name** Diane K. Myers
APS INTERNATIONAL, LTD.**Address** APS International Plaza
7800 Glenroy Road
Minneapolis, MN 55439-3122
U.S.A. TEL: (952) 831-7776Is this person responsible for
costs and expenses?

YES (X) NO ()

* If not, check in the amount of
_____ is attached.

* Or proof of payment is attached.

1/ Complete the original and two copies of this form; if A(1) is applicable, attach the original and two copies of the translation of this item in the language of the State of destination.

* Delete if inapplicable

The Central Authority signing this letter rogatory has the honor to transmit to you in triplicate the documents listed below, and in conformity with the Protocol to the Inter-American Convention on Letters Rogatory:

- * A. Requests their prompt service on:

Laginha Agro Industrial S/A

Rodovia AL 101, Norte - KM 06, Nr. 3.600

Maceio-AL-CEP 57033-070 BRASIL

The undersigned authority requests that service be carried out in the following manner:

- * (1) In accordance with the special procedure or additional formalities that are described below, as provided for in the second paragraph of Article 10 of the above-mentioned Convention; or

- * (2) By service personally on the identified addressee or, in the case of a legal entity, on its authorized agent; or

- * (3) If the person or the authorized agent of the entity to be served is not found, service shall be made in accordance with the law of the State of destination.

- * B. Requests the delivery of the documents listed below to the following judicial or administrative authority:

Authority: _____

- * C. Requests the Central Authority of the State of destination to return to the Central Authority of the State of origin one copy of the documents listed below and attached to this letter rogatory, and an executed Certificate on the attached Form C.

Done at _____ this _____ date of _____, 20____.

seal

Signature and stamp of the judicial or other
adjudicatory authority of the State of origin
U.S. Judge or Clerk

Signature and stamp of the Central Authority
of the State of origin
U.S. Central Authority

Title or other identification of each document to be delivered:

Summons in a Civil Case; Civil Cover Sheet; Complaint; Exhibits A, B, C, D, E, F; Certified
Translations.

(Attach additional pages, if necessary.)

* Delete if inapplicable.

**ANNEX TO THE ADDITIONAL PROTOCOL
TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY**

FORM B
ESSENTIAL INFORMATION FOR THE ADDRESSEE 1/

To (Name and address of the person being served) Laginha Agro Industrial S/A
Rodovia AL 101, Norte - KM 06, Nr. 3.600, Maceio-AL-CEP 57033-070 BRASIL

You are hereby informed that (Brief statement of nature of service) _____
A civil lawsuit has been started against you. The specifics of the lawsuit are described herein
in Part I, Paragraphs A - F and Part III.

A copy of the letter rogatory that gives rise to the service or delivery of these documents is attached to this document. This copy also contains essential information for you. Also attached are copies of the complaint or pleading initiating the action in which the letter rogatory was issued, of the documents attached to the complaint or pleading, and of any rulings that ordered the issuance of the letter rogatory.

ADDITIONAL INFORMATION

I *

FOR SERVICE

- A. The document being served upon you (original or copy) concerns the following:
Plaintiff's damages as the result of the defendant's breach of Guarantee.
- B. The remedies sought or the amount in dispute is as follows:
Plaintiff prays for judgment against the defendant for compensatory damages in the amount of no less than \$525,401.74 plus all accrued interest, costs and fees; awarding all costs, fees and expenses (including reasonable attorney fees) incurred in enforcing the Guarantee; and granting such other and further relief as the Court deems just and proper.
- C. By this service, you are requested:
To serve upon plaintiff's attorney, Martin J. Bishop, FOLEY & LARDNER LLP, 321 North Clark Street, Suite 2800, Chicago, IL 60610 USA an answer to the complaint within 20 days after service, exclusive of the day of service, and also file the answer with the Clerk of United States District Court, Northern District of Illinois, within a reasonable time after service.
- D. * In case of service on you as a defendant, you can answer the complaint before the judicial or other adjudicatory authority specified in Form A, Box 1 (State place, date and hour):

- * You are being summoned to appear as: _____

1/ Complete the original and two copies of this form in the language of the State of origin and two copies in the language of the State of destination.

* Delete if inapplicable

* If some other action is being requested of the person served, please describe:

E. If you fail to comply, the consequences might be: _____
A default judgment will be taken against you for the relief demanded in the complaint.

F. You are hereby informed that a defense counsel appointed by the Court or the following legal aid societies are available to you at the place where the proceeding is pending.

Name: _____ Upon showing of need and at the discretion of the court,
Address: _____ defense counsel shall be appointed.

The documents listed in Part III are being furnished to you so that you may better understand and defend your interests.

II *

~~FOR INFORMATION FROM JUDICIAL OR ADMINISTRATIVE AUTHORITY~~

To:

(Name and address of the judicial or administrative authority)

You are respectfully requested to furnish the undersigned authority with the following information:

~~The documents listed in Part III are being furnished to you to facilitate your reply.~~

* Delete if inapplicable

III

LIST OF ATTACHED DOCUMENTS

Summons in a Civil Case; Civil Cover Sheet; Complaint; Exhibits A, B, C, D, E, F; Certified
Translations.

(Attach additional pages if necessary.)

Done at _____ this _____ day

of _____, 20__

§ seal

Signature and stamp of the judicial or other
adjudicatory authority of the State of origin
U.S. Judge or Clerk

Signature and stamp of the Central Authority
of the State of origin
U.S. Central Authority

**ANNEX TO THE ADDITIONAL PROTOCOL
TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY**

FORM C

CERTIFICATE OF EXECUTION 1/

To:

(Name and address of judicial or other adjudicatory authority that issued the letter rogatory)

In conformity with the Additional Protocol to the Inter-American Convention on Letters Rogatory, signed at Montevideo on May 8, 1979, and in accordance with the attached original letter rogatory, the undersigned Central Authority has the honor to certify the following:

- * A. That one copy of the documents attached to this Certificate has been served or delivered as follows:

Date:

At (Address)

By one of the following methods authorized by the Convention:

- * (1) In accordance with the special procedure or additional formalities that are described below, as provided for in the second paragraph of Article 10 of the above-mentioned Convention, or

- * (2) By service personally on the identified addressee or, in the case of a legal entity, on its authorized agent, or

- * (3) If the person or the authorized agent of the entity to be served was not found, in accordance with the law of the State of destination: (Specify method used)

1/ Complete the original and one copy in the language of the State of destination.

* Delete if inapplicable

- * B. That the documents referred to in the letter rogatory have been delivered to:

Identity of person _____

Relationship to the addressee (family, business, or other) _____

- * C. That the documents attached to the Certificate have not been served or delivered for the following reason(s):

- * D. In conformity with the Protocol, the party requesting execution of the letter rogatory is requested to pay the outstanding balance of costs in the amount indicated in the attached statement.

Done at _____ the ____ day of _____, 20____

Signature and stamp of the Central Authority of the State of destination

Where appropriate, attach originals or copies of any additional documents proving service or delivery, and identify them.

* Delete if inapplicable

**ANNEX TO THE ADDITIONAL PROTOCOL
TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY**

FORM A

LETTER ROGATORY 1/

1

**REQUESTING JUDICIAL OR OTHER
ADJUDICATORY AUTHORITY****Name** Hon. Joan H. Lefkow**Address** United States District Court
Northern District of Illinois
Everett McKinley Dirksen
United States Courthouse, 20th Floor
219 South Dearborn Street
Chicago, IL 60604 USA

2

CASE**DOCKET NO:** 08CV3031Phosphate Chemicals Export Association, Inc.,
Plaintiff,
versus
Laginha Agro Industrial S/A and
JL Comercial Agroquimica Ltda.,
Defendants.

3

**CENTRAL AUTHORITY OF THE
STATE OF ORIGIN****Name** U.S. Department of Justice**Address** Office of International Judicial Assistance
1100 L Street NW, Room 11001
Washington, DC 20530
USA

4

**CENTRAL AUTHORITY OF THE
STATE OF DESTINATION****Name** Ministry of Justice**Address** Esplanada dos Ministerios
Block T, Ed. Sede
70064-900 Brasilia, D.F.
Brazil

5

REQUESTING PARTY**Name** Phosphate Chemicals Export Association, Inc.**Address** c/o counsel

6

COUNSEL OF THE REQUESTING PARTY**Name** Martin J. Bishop
Daniel M. Cordis**Address** FOLEY & LARDNER LLP
321 North Clark Street, Suite 2800
Chicago, IL 60610-4764
USA**PERSON DESIGNATED TO ACT IN CONNECTION WITH THE LETTER ROGATORY****Name** Diane K. Myers
APS INTERNATIONAL, LTD.**Address** APS International Plaza
7800 Glenroy Road
Minneapolis, MN 55439-3122
U.S.A. TEL: (952) 831-7776Is this person responsible for
costs and expenses?

YES (X) NO ()

* If not, check in the amount of
_____ is attached.

* Or proof of payment is attached.

1/ Complete the original and two copies of this form; if A(1) is applicable, attach the original and two copies of the translation of this item in the language of the State of destination.

* Delete if inapplicable

The Central Authority signing this letter rogatory has the honor to transmit to you in triplicate the documents listed below, and in conformity with the Protocol to the Inter-American Convention on Letters Rogatory:

- * A. Requests their prompt service on:

JL Comercial Agroquimica Ltda.

Avenida Gustavo Paiva, 3.771 Mangabeiras

Maceio-AL-CEP 57032-000 BRASIL

The undersigned authority requests that service be carried out in the following manner:

- * (1) In accordance with the special procedure or additional formalities that are described below, as provided for in the second paragraph of Article 10 of the above-mentioned Convention; or

- * (2) By service personally on the identified addressee or, in the case of a legal entity, on its authorized agent; or

- * (3) If the person or the authorized agent of the entity to be served is not found, service shall be made in accordance with the law of the State of destination.

- * B. Requests the delivery of the documents listed below to the following judicial or administrative authority:

Authority: _____

- * C. Requests the Central Authority of the State of destination to return to the Central Authority of the State of origin one copy of the documents listed below and attached to this letter rogatory, and an executed Certificate on the attached Form C.

Done at _____ this _____ date of _____, 20__.

4 seal

Signature and stamp of the judicial or other
adjudicatory authority of the State of origin
U.S. Judge or Clerk

Signature and stamp of the Central Authority
of the State of origin
U.S. Central Authority

Title or other identification of each document to be delivered:

Summons in a Civil Case; Civil Cover Sheet; Complaint; Exhibits A, B, C, D, E, F; Certified
Translations.

(Attach additional pages, if necessary.)

* Delete if inapplicable.

**ANNEX TO THE ADDITIONAL PROTOCOL
TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY**

FORM B

ESSENTIAL INFORMATION FOR THE ADDRESSEE 1/

To (Name and address of the person being served) **JL Comercial Agroquimica Ltda.**
Avenida Gustavo Paiva, 3.771 Mangabeiras, Maceio-AL-CEP 57032-000 BRASIL

You are hereby informed that (Brief statement of nature of service) _____
A civil lawsuit has been started against you. The specifics of the lawsuit are described herein
in Part I, Paragraphs A - F and Part III.

A copy of the letter rogatory that gives rise to the service or delivery of these documents is attached to this document. This copy also contains essential information for you. Also attached are copies of the complaint or pleading initiating the action in which the letter rogatory was issued, of the documents attached to the complaint or pleading, and of any rulings that ordered the issuance of the letter rogatory.

ADDITIONAL INFORMATION

I *

FOR SERVICE

- A. The document being served upon you (original or copy) contains the following:
Plaintiff's damages as the result of the defendant's breach of contract.
- B. The remedies sought or the amount in dispute is as follows:
Plaintiff prays for judgment against the defendant for compensatory damages in the amount of no less than \$525,401.74 plus all accrued interest, costs and fees; awarding all costs, fees and expenses (including reasonable attorney fees) incurred in enforcing defendant's obligations; and granting such other and further relief as the Court deems just and proper.
- C. By this service, you are requested:
To serve upon plaintiff's attorney, Martin J. Bishop, FOLEY & LARDNER LLP, 321 North Clark Street, Suite 2800, Chicago, IL 60610 USA an answer to the complaint within 20 days after service, exclusive of the day of service, and also file the answer with the Clerk of United States District Court, Northern District of Illinois, within a reasonable time after service.
- D. * In case of service on you as a defendant, you can answer the complaint before the judicial or other adjudicatory authority specified in Form A, Box 1 (State place, date and hour):

- * You are being summoned to appear as: _____

1/ Complete the original and two copies of this form in the language of the State of origin and two copies in the language of the State of destination.

* Delete if inapplicable

* If some other action is being requested of the person served, please describe:

E. If you fail to comply, the consequences might be: _____
A default judgment will be taken against you for the relief demanded in the complaint.

F. You are hereby informed that a defense counsel appointed by the Court or the following legal aid societies are available to you at the place where the proceeding is pending.

Name: _____ Upon showing of need and at the discretion of the court,
Address: _____ defense counsel shall be appointed.

The documents listed in Part III are being furnished to you so that you may better understand and defend your interests.

II *

~~FOR INFORMATION FROM JUDICIAL OR ADMINISTRATIVE AUTHORITY~~

~~_____

(Name and address of the judicial or administrative authority)~~

~~You are respectfully requested to furnish the undersigned authority with the following information:~~

~~---

---~~

~~The documents listed in Part III are being furnished to you to facilitate your reply.~~

* Delete if inapplicable

III

LIST OF ATTACHED DOCUMENTS

Summons in a Civil Case; Civil Cover Sheet; Complaint; Exhibits A, B, C, D, E, F; Certified
Translations.

(Attach additional pages if necessary.)

Done at _____ this _____ day
of _____, 20__

seal

Signature and stamp of the judicial or other
adjudicatory authority of the State of origin
U.S. Judge or Clerk

Signature and stamp of the Central Authority
of the State of origin
U.S. Central Authority

**ANNEX TO THE ADDITIONAL PROTOCOL
TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY**

FORM C

CERTIFICATE OF EXECUTION 1/

To: _____

(Name and address of judicial or other adjudicatory authority that issued the letter rogatory)

In conformity with the Additional Protocol to the Inter-American Convention on Letters Rogatory, signed at Montevideo on May 8, 1979, and in accordance with the attached original letter rogatory, the undersigned Central Authority has the honor to certify the following:

- * A. That one copy of the documents attached to this Certificate has been served or delivered as follows:
Date: _____
At (Address) _____

By one of the following methods authorized by the Convention:

- * (1) In accordance with the special procedure or additional formalities that are described below, as provided for in the second paragraph of Article 10 of the above-mentioned Convention, or

* (2) By service personally on the identified addressee or, in the case of a legal entity, on its authorized agent, or
* (3) If the person or the authorized agent of the entity to be served was not found, in accordance with the law of the State of destination: (Specify method used)

1/ Complete the original and one copy in the language of the State of destination.

* Delete if inapplicable

- * B. That the documents referred to in the letter rogatory have been delivered to:

Identity of person _____

Relationship to the addressee (family, business, or other) _____

- * C. That the documents attached to the Certificate have not been served or delivered for the following reason(s):

- * D. In conformity with the Protocol, the party requesting execution of the letter rogatory is requested to pay the outstanding balance of costs in the amount indicated in the attached statement.

Done at _____ the ____ day of _____, 20__

Signature and stamp of the Central Authority of the State of destination

Where appropriate, attach originals or copies of any additional documents proving service or delivery, and identify them.

* Delete if inapplicable